

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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VERIFIED IDENTITY PASS, Inc., d/b/a CLEAR
REGISTERED TRAVELER,

Plaintiff,

v.

FRED FISCHER, SAFLINK CORPORATION,
and FLO CORPORATION

Defendants.
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: No. 07 Civ. 6538 (JFK)
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:
: DECLARATION OF KEVIN
: MITCHELL
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I, KEVIN MITCHELL, declare as follows:

1. I am the Chairman of Business Travel Coalition, Inc. ("BTC") and the manager of the travel-industry website, <http://www.businesstravelcoalition.com>, a leading source for travel industry news worldwide. I respectfully submit this declaration at the request of the FLO Corporation ("FLO"), for whom I now act as an independent consultant helping develop its "Registered Traveler" business. I am familiar with Verified Identity Pass, Inc. ("Verified"), having previously (from April 2005 to April 2006) provided consulting services to it. I know Fred Fischer, whom I first met in December 2005 when he started working for Verified, and who now works for FLO. Unless stated otherwise, I have personal knowledge of the matters stated herein.

2. I have read Verified's complaint against Mr. Fischer, FLO and Saflink Corporation ("Saflink") and would like to address those matters that bear upon my former dealings with Verified and current dealings with FLO. To my knowledge, Mr. Fischer has not given to me,

BTC or for that matter FLO any information proprietary to Verified. Mr. Fischer has not given to me any list of names such as might be on any "Salesforce Database" compiled by Verified. Mr. Fischer has provided to me from time to time in his official capacity at Verified and FLO email addresses to include in BTC's various circulation databases (now including more than 30,000 persons and/or companies). Mr. Fischer, however, did not help identify the recipients of the three email messages cited by Verified, *i.e.*, the messages sent to different segments of BTC's circulation database on July 5, 2007, July 10, 2007, and July 16, 2007. To the contrary, I sent those emails indiscriminately to BTC's existing database of email addresses (described below).

3. I organized BTC ten years ago to create a platform to advocate views on issues important to the travel-services industry. There is a core group of 300 members that pay an annual fee and there are thousands of other participants on an ad hoc basis. Since creating BTC I have actively promoted industry views in Washington and other capitals. During the past 10 years, for example, I have testified before Congressional committees on approximately 25 occasions. In addition, I act as an independent consultant to companies in the travel-services business. And I manage BTC's web site, www.businesstravelcoalition.com, one of the industry's largest news sources, with over 200,000 hits on its website per month and a mailing database of over 30,000 contacts.

4. Since 9/11 I have also closely monitored the efforts of the Transportation Security Administration ("TSA") to create the RT program at the nation's airports. The TSA's RT program was slow to get started but it is now growing rapidly. In January and February 2007 the TSA finalized a number of important performance standards. More and more airports will soon

offer fast lanes to TSA-approved RT cardholders. As a result this is a period of intensifying competition between Verified and FLO, the leading RT providers now seeking to expand their presence in airports and cardholder volume.

My Consulting Services for Verified

5. Verified retained me in April 2005 to assist its efforts to develop a "Registered Traveler" ("RT") business, and for a one-year period (until April 2006) I provided consulting services to it.

6. That year is divided in my mind into 3 parts. Starting in April 2005 and for the next several months, I worked actively with Courtney Nicholls, Verified's COO, mainly to promote Verified to a variety of travel-industry participants (potential customers, airlines, associations, and other travel-services organizations.) Most of that effort was devoted to Verified's airport proposals, including its successful bid to provide RT services to the airport in Orlando, FL, a pilot program for the TSA's developing RT program. There was then a relatively inactive period that ended in December 2005 when Verified hired Fred Fischer, whom I did not know at the time (but who had contacted Verified based on an executive search that I had initiated for Verified). At Ms. Nicholls's direction I worked with Mr. Fischer until I decided in April 2006 not to renew my consultancy arrangement with Verified. The work with Mr. Fischer mainly concerned the marketing of Verified's RT cards to the major corporations likely to buy RT cards or promote the use of RT-related services.

7. During my time as a consultant for Verified, my primary tasks included introducing Mr. Brill and Ms. Nicholls to potential customers or partners in the airline industry, marketing Verified through BTC's newsletters, and assisting Verified in making proposals to airports (for example, Verified's proposal in mid-2005 to the Orlando, FL airport that highlighted its association with BTC). I was useful to Verified because it was a recent start-up and none of its employees had a background in the airline or travel-services industry. It was therefore interested in the support and immediate access to industry leaders I could provide through BTC. From time to time Verified provided the email and contact details of people it wanted to receive the BTC newsletters. Verified sent these contacts by email, USB and hard copy. After checking for duplicates (of which there were a lot), I would always add these contacts to the BTC database.

Contact Information of Corporate Travel-Services Managers

8. I do not recall being aware that Verified had created or was considering creating a special database on which to list its contacts throughout Government and the travel industry. I must say that had I been aware that Verified planned to compile such a list of industry contacts I would not have considered such information (names, telephone numbers, and email addresses) to be proprietary to Verified, and would have told it so if asked.

9. Anyone experienced in the travel-services business knows that identifying the decision makers responsible for travel services in the major corporations in the travel industry is relatively easy. Anyone interested in compiling such a list could do so without much difficulty. There are four large trade associations, for example, the National Business Travel Association ("NBTA"), the Association of Corporate Travel Executives ("ACTE"), the Airports Council

International (“ACT”), and the American Association of Airport Executives (“AAAE”). All four associations distribute and sell membership rosters that identify and give contact details for the travel executives of virtually every company active in the travel-services industry. Industry consultants also frequently provide phone and email information for important industry contacts, but such information is no by no means confidential. My personal industry knowledge aside, I could doubtless create an extensive list of industry decision-makers hundreds of names long from the BTC database and the rosters of the industry’s main trade associations.

My Work for FLO

10. Earlier this year Mr. Fischer introduced me to FLO and I am now acting for FLO as an independent consultant to develop its RT business. The mailings that I have recently sent to BTC’s circulation lists are a normal part of BTC’s business. Verified’s papers suggest that Mr. Fischer effectively sent those messages, but that is not true.

11. The BTC website www.businesstravelcoalition.com is an open interactive site that anyone can join by logging on and giving a return email address (or later leave by deactivating the link). The database has built up over the years to where it now includes many thousands of contacts. To manage the site I have separated the database into several discrete categories. When I send a particular message, I first decide which segment of the database to tap and then circulate the message to the addressees in that category.

12. I sent the July 5th email (it is Ex. C to the affidavit of Allison Beer) to the “Aviation Security Journal” segment of BTC’s circulation base. (I have from time to time

considered putting out a weekly e-journal and that explains the name.) As of July 25, 2007, there were 10,578 email addresses in that segment of BTC's database. That means the July 5th email went to those 10,578 addressees.

13. That message was not prompted by FLO. Every month I write an article for Business Travel Executive magazine. The magazine allows me to send a preview of the article to the BTC constituency before it is published in the magazine. The July 5th email is simply my preview of the July article (Beer Ex. F) that generally describes how the RT program evolved and now works.

14. The July 10th email message (Beer Aff. Ex. D) was circulated to the "Travel Industry" part of BTC's database. As of July 25, 2007, there were 10,237 email addresses in that segment of BTC's database. Among other things the message informs the reader of a 35% sign-up discount for RT cards offered by FLO before July 20, 2007, and invites the reader to call Mr. Fischer for additional information. While I sent that message in connection with the consulting assistance provided to FLO, I did so on FLO's behalf to BTC's circulation base. Mr. Fischer did not suggest names to include in the mailing, but rather relied on BTC's existing database and my judgment.

15. The July 16th email message (Beer Aff. Ex. E) was circulated to the same "Aviation Security Journal" segment of the database as my July 5th message forwarding the July magazine article. That message invites the reader to participate in a 7-minute survey that BTC was conducting on FLO's behalf. Mr. Fischer did not suggest names to include in that mailing either.

16. I have read Verified's assertions that Mr. Fischer provided the email addresses of 12 persons said to be on Verified's Database. (See Beer Aff. ¶ 17.) I do not know why those individuals received emails messages from BTC. I do not control the BTC site in the sense that anyone with an interest in the travel industry can sign onto the site or be deleted from the site at any time. The fact that someone receives a mass BTC emailing does not mean that Mr. Fischer caused those names to be added to BTC's database. I should also add that I checked the BTC database today (July 30th, 2007) and none of the 12 individuals named by Verified (Beer Aff. ¶ 17) have unsubscribed to the mailing list.

In accordance with 28 U.S.C. § 1746 I declare under penalty of perjury that the foregoing is true and correct.

Executed on 31 July, 2007


KEVIN MITCHELL